

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7315 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

SHAILESHKUMAR RAJUBHAI PARMAR

Versus

COMMISSIONER OF POLICE AHMEDABAD

Appearance:

1. Special Civil Application No. 7315 of 2004
MR SATISH R PATEL for Petitioner No. 1
MR KR JANI for Petitioner No. 1
MS HANDA PUNANI Ld. AGP for Respondent No. 1-3
RULE SERVED for Respondent No. 1-2
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CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 08/12/2004

ORAL JUDGEMENT

1. Heard the ld. advocate Mr. Patel for the petitioner and Ms. Punani ld. AGP for the respondent-State. Affidavit-in-reply tendered by ld. AGP Ms. Punani is ordered to be taken on record.

2. The present petition is under Article 226 r/w. Article 21 and 22(5) of the Constitution of India. The petitioner has challenged legality and validity of order of detention dated 2.6.2004, passed by the Police Commissioner, Ahmedabad City, under purported exercise of powers vested with the Detaining Authority under Sec. 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'the Act').

3. The petitioner is branded as "a bootlegger" within the meaning of Sec. 2(b) of the Act, as he was found involved in two offences registered under the Bombay Prohibition Act. While passing the order of detention under challenge dated 2.6.2004, Police Commissioner, Ahmedabad city - detaining authority has considered the fact of registration of two offences punishable under the Bombay Prohibition Act. In the grounds for detention conveyed to the petitioner when the order under challenge was executed, the details of these two criminal offences are mentioned. The first offence was registered by Ahmedabad DCB Police Station on 14.3.2004 and the second offence has been registered with Odhav Police Station on 31.5.2004. On that very day, the petitioner was apprehended and the police recovered 1600 liters of country liquor. It is mentioned in the grounds of detention that the activity of the present petitioner was potential enough to disturb the public order and public health. No statement in present case has been recorded by the sponsoring authority, so the papers of two different criminal offences registered against the present petitioner were placed before the detaining authority.

4. The order of detention is assailed on various ground, but Mr. Patel has focussed his arguments mainly on two grounds. The first ground is that fact of registration of two different prohibition offences is itself are not sufficient to infer that the activity of the petitioner was a threat to the public order or public health, at the most it can be said to be violation of a particular special statute and it was the activity prejudicial to the maintenance of law and order and not public order. In absence of any other cogent material, on the strength of which the subjective satisfaction could have been recorded were not there before the

authority and, therefore, the order of preventive detention legally could not have been passed, especially when the petitioner was in judicial custody there was no need to pass the order of preventive detention. It is clearly revealed from the grounds conveyed to the petitioner that when the papers were placed for consideration by the sponsoring authority, the petitioner was in judicial custody. The subjective satisfaction is recorded on conjecture and surmises that the petitioner after getting the bail from the competent court may involve himself in the similar bootlegging activity injurious to public health or public order. This court in more than one decision, the satisfaction recorded on such factual matrix has not found valid or satisfactory. Mr. Patel has placed reliance on a decision of this court in Special Civil Application No. 12225/2002 dated 12.5.2003, wherein this court has observed that passing of order of preventive detention against a detenu who is in judicial custody is nothing but non-application of mind. It was not even required to pass such order or to make such proposal by the detaining authority. The principle laid down by the Apex Court in a decision reported in AIR 2000 SC 3675 also, therefore, would help the present petitioner.

5. The order under challenge is also not found sustainable on the ground that it is passed mechanically. The petitioner was arrested in the second offence referred to by the detaining authority on 31.5.2004. On 1.6.2004, the accused was produced before the ld. Metropolitan Magistrate, Court no. 20, City of Ahmedabad and a police remand for custodial interrogation was prayed but the ld. Metropolitan Magistrate rejected the request for grant of police remand vide order dated 21.6.2004. The order of detention is of dated 2.6.2004. So, it is difficult to infer that the order of detention is passed without proper application of mind in the light of ratio of the decision of this Court in the case of Ranubhai Bhikhabhai Bhavvad (Vekaria) v. State of Gujarat and ors., reported in 2000(3) GLR p. 2696. For short, the order is not found sustainable and, therefore, the same is required to be quashed.

This petition is allowed. Impugned order of detention dated 2.6.2004 passed by the Police Commissioner, Ahmedabad city, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute. DS permitted.

(C.K. BUCH, J.)

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